

**PT 02-33**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>AMERICAN LEGION POST 1180</b>	)		
<b>Applicant</b>	)	<b>Docket #</b>	<b>01-03-06</b>
<b>v.</b>	)		
	)	<b>A.H. Docket #</b>	<b>01-PT-0061</b>
	)	<b>P. I. #</b>	<b>03-07-06-304-022</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. George Logan, Special Assistant Attorney General for the Illinois Department of Revenue.

**Synopsis:**

The hearing in this matter was held on March 27, 2002, to determine whether Bond County Parcel Index No. 03-07-36-304-022 qualified for exemption during the 2001 assessment year.

Mr. Richard W. Niepert, Adjutant; Mr. Clayton Edwards, past Commander; and Mr. William Eubank, also past Commander of American Legion Post 1180 (hereinafter referred to as the "Applicant") were present and testified on behalf of applicant.

The issues in this matter include: first, whether applicant was the owner of the parcel during the 2001 assessment year; secondly, whether the applicant is a veteran's organization; and lastly, whether the parcel was used by applicant for exempt purposes during the 2001 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be granted. In support

thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 **ILCS** 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Department that Bond County Parcel Index No. 03-07-36-304-022 did not qualify for a property tax exemption for the 2001 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 8)

2. On July 9, 2001, the Department received the request for exemption of Bond County Parcel Index No. 03-07-36-304-022. On August 30, 2001, the Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. On September 16, 2001, applicant timely protested the denial and requested a hearing. The hearing on March 27, 2002, was held pursuant to that request. (Dept. Ex. No. 1)

3. Applicant is a veteran's organization. (Applicant's Ex. No. 2)

4. Applicant acquired the subject parcel by a quitclaim deed dated October 30, 2000. The lot is one hundred and ten feet (110) by one hundred and seven feet (107). (Dept. Ex. No. 1; Tr. p. 17)

5. Applicant obtained the property to be used as a memorial park for the static display of military equipment including an M-60 tank, a flagpole, and a sign. (Dept. Ex. No. 1)

6. Applicant wanted a tank. The federal government would not give applicant a tank unless applicant owned the ground where the tank would be placed. Applicant acquired the tank on January 20, 2002. (Tr. pp. 18-19)

7. In 2001 applicant had a 12 by 14-foot cement slab poured on the subject property in anticipation of the arrival of the tank. It took applicant two years to arrange the procurement and delivery of the tank. (Tr. p. 19; Applicant's Ex. No. 1)

8. On the subject property, applicant has placed a sign promoting community events and patriotic messages. Liberty Baptist Church holds its nativity scene at Christmas on the property. Applicant has an illuminated flag and flag pole displayed. The Fireman's association holds an annual cakewalk on the

real estate. The applicant does not charge for the use of the property. Picnics are held there. The land is available to the community as an open area dedicated to veterans. (Dept. Ex. No. 1; Tr. pp. 14-15, 20, 22-23)

9. Children are bussed to the park from the school to view the tank and ask applicant's members questions. The memorial park is dedicated to all veterans that served this country. (Tr. pp. 23, 28-29)

9. It was explained to applicant that it was entitled to counsel. Applicant chose not to be so represented. (Tr. p. 12)

### **CONCLUSIONS OF LAW:**

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 **ILCS** 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941) Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of

establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

In interpreting the above statutory language, the Supreme Court in North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967) (hereinafter referred to as “North Shore”) stated that the provision granting an exemption to a veteran's organization required the organization's utilization of the property encompass all three of the required uses: civic, patriotic, and charitable.

In North Shore, the court found that the applicant's usage of the property for its meetings, wedding receptions, and maintaining a bar on the premises necessitated a finding by the court that the primary use of the property was not exempt. The Supreme Court stated:

Plaintiff has not shown, however, that the primary use of the premises was in furtherance of these charitable purposes. The record shows that the premises are used primarily for the following purposes: meetings, both business and social, of the plaintiff and its various auxiliaries; wedding receptions of members of the Post and third parties; dinners and social parties for plaintiff and its auxiliaries; meetings of boy scout troops; meetings of other veterans organizations for a rental donation of \$15; a bar is maintained primarily for members; pool and billiard facilities are maintained for members and their guests; and a five-room apartment is maintained for a caretaker who pays \$40 per month as caretaker. None of these uses are *per se* patriotic and charitable. *Id.* at 235-236.

There is no dispute that the applicant herein is a veteran's organization. The applicant acquired the property by a quitclaim deed dated October 30, 2000. Therefore, the only question before me is whether the activities of the applicant on the parcel in question qualify as charitable, patriotic, and civic in 2001.

I find the use of applicant's property herein issue is very different from the social activities shown in North Shore. The applicant does not hold meetings or any other activities on the subject property. Rather, a tank located on a concrete slab is on display in the middle of the property. An illuminated flag and flagpole are in one corner. A sign describing community events and displaying patriotic messages is to the left of the tank.

Regarding the first requirement, that the use of the property be charitable, in the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization and use of property is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits;  
and
- (6) The primary use of the property is for charitable purposes.

I find the applicant fulfills the above requirements because no charges are made for the use of the subject property and anyone who wishes to use the property or view the tank, flag, and sign on the subject property may do so.

To continue with the civic and patriotic requirements, the Court, in North Shore Post No. 21, failed to define what would be a patriotic or civic use of property, and I have been unable to find Illinois case law that defines the terms "patriotic" or "civic". However, in C. I. R. v. Lake Forest, Inc., 305 F.2d 814 (4<sup>th</sup> Cir. 1962), the United States Court of Appeals, in regard to a requested exemption from income tax for a civic corporation, and citing as authority the Oxford English Dictionary, found that "civic" means "1. Of, pertaining, or proper to citizen. 2. Of or pertaining to a city, borough, or municipality. 3. Of or pertaining to citizenship." *Id.* at 817 This definition is consistent with Black's Law Dictionary which defines civic as "pertaining to a city, citizen, or to citizenship." "Patriotic" is defined in Webster's Third New International

Dictionary as “inspired by patriotism: actuated by love of one’s country: devoted to one’s country.”

Applicant displays an illuminated flag and flagpole on the property as a sign of civic pride and patriotism. The tank itself, gotten from the federal government, is also a sign of patriotism in conjunction with applicant’s veteran’s principles and doctrines. The sign carries messages about community events and patriotic messages. All are civic and patriotic uses of the property.

In 2001, the applicant had a 12 by 14-foot cement slab poured in anticipation of the arrival of the tank. The tank did not arrive on the property until 2002. It took applicant two years to arrange for the procurement and delivery of the tank. In Lutheran Church of Good Shepherd of Bourbonnais v. Department of Revenue, 316 Ill.App.3d 828 (3<sup>rd</sup> Dist. 2000) the court found that the church’s election not to plant crops on two parcels adjacent to the church’s exempt land, and the mowing and tilling in preparation for planting grass seed as a part of the process of changing the land from agricultural use to additional church yard was sufficient adaptation to grant a real estate property tax exemption. I find that the applicant’s preparation of the property for the arrival of the tank as well as displaying the flag and sign result in sufficient adaptation and use of the subject real property to qualify for exemption in 2001.

I therefore find that the applicant has established that its ownership and use of the subject property qualifies it for a property tax exemption for the 2001 assessment year. The applicant’s memorial park that is open to the public and contains applicant’s tank, flag, and sign are used exclusively for charitable purposes, which are also patriotic and civic, as required by the statute.

It is therefore recommended that Bond County Parcel Index No. 03-07-36-304-022 be exempt from property taxation for the 2001 assessment year.

Respectfully Submitted,

Date: May 9, 2002

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Barbara S. Rowe  
Administrative Law Judge